Confidential

Legis File No. 28 of 1909-10

Serial Nos. 1-9

1909-10

GENERAL AND REVENUE SECRETARIAT.

P-127

Judicial Branch
(Legislation Section)

Part A: Manuscript
for January 1911

Subject:- Converts' disabilities removal Bill

Serial Nos. 1-9

1. No 4936 dated 27th July 1909
From the First Asst to the Resident in Mysore
States that in consequence of a recent case (decided by the Munsiff of Dunkur in 1907) the question of legislation to remove the disabilities of Christian converts has been revived, asks to be furnished with the record of the above case for transmission to the Secretary of the State. Enquires if a case similar to the above was ever brought before the Courts of the state during the days of the Commission, points out the desireability of legislation so as to make the law in Mysore more in accordance with the principles of modern justice and concludes by saying that in any case it is necessary that the fundamental rights and liabilities of British subjects residing in Mysore should be assured

2. No Pol. 648 dated 4th Feb: 1910
To the ~~Ist Resident~~ First Asst to the Resident in Mysore
Forwards printed spare copies of the records of the Dunkur case and states that the measure will be dealt with in the Legis. council and the result communicated to the Residency in due course and

~~G. R. S. 57.~~

G.R.S.11]

1909. 10

GENERAL AND REVENUE SECRETARIAT

(Legislation)

NOTES.

File No.

FILE HEADING.

Civil disabilities of Christian Converts in Mysore

From

The First Assistant to the Resident in Mysore

No. 4936 Dated 27th July 09. Received

Diary No. 45	Enclos.	Spare Copies	Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that in consequence of a recent case (decided by the Munsiff of Tumkur in 1907) the question of legislation to remove the disabilities of Christian Converts has been revived; asks to be furnished with the record of the above case for transmission to the Secretary of State; Enquires if a case similar to the above was brought before the Courts of the State during the days of the Commission; points out the desirability of legislation so as to make the law in Mysore more in accordance with principles of modern justice and concludes by saying that in any case it is necessary that the fundamental rights and liberties" of British Subjects residing in Mysore should be Ensured

NOTES AND ORDERS.

1/

10/7 P.F.O

NOTES—First sheet

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General and Revenue Secretariat.

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R, R1, R2

The printed Minutes put up give the History of this question from the time it was first started down to the year 1906. The literature is so full and the question has been discussed so thoroughly from various standpoints, that it is unnecessary to note at any length. A few points that stand out prominently are noted below for convenience of reference —

(1) The Residency has asked if a Case similar to the Tumkur Case of 1909 was ever brought before the Courts during the days of the Commission.

I have not been able to trace out a Case any Case in which the exact question involved in the Tumkur Case (viz proprietary disabilities of Converts) was ever raised prior to the Rendition Both the Cases of Hutchi, which in 1874 raised the question of marital rights of a Hindu wife subsequently converted to Christianity, resulted in a thorough Examination of the whole question — including the proprietary disabilities of Converts. The result of this Enquiry is embodied in the printed Minutes put up.

R

R. 6. 9

NOTE- Contn sheet.

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(29) It may be incidentally noted here that the absence of any case during the days of the Commission Exactly similar to the present Tumkur case Shows the Extreme paucity of instances of hardship. Very likely Even after Rendition, such Cases are very few.

(2) Attention is invited to the D.O. dated 31st Jan 09 of the late Dewan Mr Madhava Rao to the H. A. Resident.

(3). Travancore has proportionately the largest Christian population in the whole of India and yet the British Indian Act has not been introduced there on the ground that it is in-consistent with the Joint Family System prevailing there ("the Tarawad")

(4) The disabilities under discussion are not anything imposed by the State on Subjects not professing the State Religion. They are the result of a personal law which is given effect to — as in British India — in matters Certain matters, E.g marriage, Inheritance. It is inevitable that such laws

3

NOTE- Contn sheet.

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Shared retain traces of their archaic origin which appear anamolous judged by modern ~~Standards~~ Conceptions of "Justice and Equity." Such anamolies are to be found in the Mahammadan law also as well as in departments of Hindu Law other than the one now under discussion. And yet, the State does not Even think of trying to remove those anamolies until public opinion is fully ripe for it. The Charge in Kathis Case Even "informed" public opinion appears to be against it, ~~the Contemplated Change~~ and it is a question whether legislation so far ahead of public opinion may be undertaken.

(5) In Case it is considered desirable to undertake legislation at all, then it may be confined to the removal of the disabilities in respect of inheritance. Even here it is a question whether the right may not be confined to the convert himself. His descendants — formed the offspring of a marriage out of the particular Caste — Can hardly be described as the heirs of the Hindu

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NOTE- Contn sheet.

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ancestors.

(6) Rights of guardianship of Children may be left with the Mother, irrespective of her religion (unless She is otherwise unfit) as it appears to be opposed to all Considerations of natural justice to part her forcibly from her Children

(7). As regards British Subjects residing in Mysore, there should be no difficulty in answering the query of the Residency. Their own personal laws can be enforced even in Mysore by the application of the ordinary principles of (private) international law. and if but if this is held not to be possible, there provision may be made to that effect by means of legislation.

5/8/09. S

Circulated to Councillors as ordered by the Secretary

2. Seen 5/8/09 5/8/09

3. Seen. I believe a reply to the Residency letter is due.

6/8/9

(The record of the Succession Case has been sent to Print and may be transmitted to Madras if it is required back.) S

There is one Copy of the Succession Judgment in the file. As the Copy has been removed for being printed. The whole record of that Case also is being printed, for transmission to the Resy

5/8/09 S

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NOTE.—Couth sheet.

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4/B a reply is due to the Residency, I request the Council to be good enough to record this minutes.

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Note—Contn. sheet.

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Second Councillor's Note on the Civil Disabilities of the Christian converts in Mysore.

5) The provision in Sec 17 of the Civil Courts Regulation applying the Hindu and Mahammadan laws to certain matters of substantive law lays down the rule followed not only in British India but in all civilised countries and in all systems of jurisprudence. It is unnecessary to say that it should not be lightly set aside.

6) The rule that is meant to be repealed by legislation is that of the Hindu Law that lays down that a "Patita" shall be incapable of inheriting property, and that of the Mahammadan law imposing a similar disability on a non-believer. It is unnecessary to consider in detail the effect of the working of this rule in the Mahammadan law as the same considerations apply in both cases. The effect of the rule is given in the appended extract from Mr. Amir Ali's work. The fact explains why the opposition to the proposed legislation

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comes from both the communities of the subjects of this State. It is enough to confine my remarks to the matter as affecting the rule of Hindu Law. The old text books of Hindu Law do not say much about the general rights or disabilities of "out-castes". The statement in Mr. Justice Ramachendra Iyer's judgment, that "the Hindu law makes him lose his civil rights", can hardly be supported in its generality. The matter is however only of an academical interest, for whatever the rules of Hindu Law may be, they can be applied by the Courts only in matters affecting " succession, inheritance, marriage or caste or any religious usage or institution" as laid down in the Civil Courts Regulation; and in all other matters there can be no difference between one who has remained a Hindu and one who has become a convert to a different faith.

7) This rule of exclusion from certain rights was not made in any spirit of antagonism to any other religion. It goes without saying that conversion to Christianity or Mahamadanism could not possibly have been in contemplation. The definition of the term "Patita" is one that has given up the

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the correct or proper duties, and taken to forbidden ways, that is, one who has given up the dharmas of his position and adopted others. At the time that this rule was adopted, the completion was not between the Hindu or Aryan religion and other religions which claimed to be of equal or superior rank, but between religion and no religion at all. Those who fell from Hindu religion could not range themselves along with the members of any recognised, organised community with rules and traditions and usuages of its own, but became the outcasts of society in every sense of the term, and were really "Patita" or fallen both morally and socially. Schismatics within the social pale were not apparently at any time regarded as "Patitas" within the purview of this rule; and if converts to Christianity and Mahamadanism were classed as out of the pale of caste, it was apparently as much the result of the exclusive claims of these two religions as of the character of the Hindu Religion. The Roman Catholics, who did not obtrude their levelling tendencies so much as the Protestants, found that they could get on

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harmoniously with their neighbours, and with them conversion did not generally mean estrangement. In this connection I would draw attention to a remarkable letter of a Catholic Priest written in 1866 (B separately printed) which is printed as paper marked, B.

9 I cannot see any force in the view that the rule attaches à stigma to the Christian Converts. That a certain stigma should come to attach to the term ~~word~~ "Patita" (which literally means "fallen", that is, fallen from the faith, society or caste) is only to be expected and the process is seen in all nations and languages and religions. It is quite needless to cite examples. That the enlightened members of the Hindu community do not attach any stigma to the profession of Christianity or any other religion to which any one is born, is shown every-day. But those who ostentatiously give up one religion and join another have to meet at the outset with certain feelings of antagonism from their former associates. This is not the creature of any rule of law, and cannot be removed by enactment. If the convert is regarded as a renegade

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NOTE—Contn. sheet.

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he returns the compliment by stigmatising those who have not followed him as heathens; and there is not much to choose between the two states of mind.

It is a very important principle in politics and legislation that no changes should be made in the national laws of inheritance, unless any of them are manifestly barbarous, and work grievous injustice on individuals, which cannot in any other way be avoided or remedied. It is settled law now that property once vested, that is, what has become the property of the man, cannot be taken away from him on account of his forsaking his religion or caste. Property rights and expectations may in this connection be viewed in three different classes ~~here~~ namely, the convert's exclusive property, interest in undivided joint property, and expectation of intestate succession to the property left by others.

About the first kind, there is no room for dispute at all. On the second ~~date~~ head, it would introduce confusion ~~by our~~ if we importing ideas and terms of the English law without discriminating how far they re

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applicable to the contents of the Hindu Law on the subject. Vested rights in English law are as good or almost as good as exclusive property, though not reduced to exclusive possession. There are many points of similarity, no doubt, between them and a Hindu's ~~the~~ joint interest in family property; but there are vital differences also. It is laid down in Hindu Law that in lands and other property acquired by a grand father, the father and son have equal ownership; but the rule is of course subject to the qualification, that "Patitas" and their issue are not entitled to share in property (Niramsakah) As both the rules are to be read together, the joint interest is not, properly speaking, vested at all in those who labour under the enumerated disabilities.

(7) As for the expectations of succession in property (whether by direct descent or collaterally), there is no particular hardship in the loss sustained by a man who deliberately renders himself incapable of succeeding as heir according to the law applicable to the person who leaves the property. The latter may, notwithstanding the conversion,

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allow his natural affection to override his caste or religious ties. If so, he has the power to bequeathe the property to his convert son or other relative; just as, if the law is altered as proposed, he would be able to disinherit him by will. Which of the alternatives should be adopted as the rule for intestate cases, would depend upon the consideration as to what may be presumed to be the intention of the defunct owner if he had chosen and had the opportunity ~~of~~ to making a will. Taking the feelings and ideas of an average Hindu in the present state of society into consideration, there can be little doubt that the more valid presumption (in the absense of expressed intention) would be that the deceased owner wished the property to devolve on his heirs who remained within the pale of his caste and religion.

(13)

(11) There is another way of viewing the matter The rights of succession of the convert, and the rights of succession to the convert may fairly be regarded as reciprocal. If the Hindu Law denies certain rights to the convert, it equally negatives the

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the rights of his unconverted relatives to his property if he dies before them. It has no doubt been decided in Madras that Hindu relatives may succeed to an intestate's property under the Indian Succession Act. But the Indian Succession Act has not been made applicable to the "Native" Christians of Mysore; and the Madras rule (even if sound law - which is open to some doubt) does not come into operation here.

I L R 9 M 466

17) Interest in joint family property is thus the only property right which has ~~the best~~ a prima facie claim for consideration. If the question arises during the life-time of the father, the right of the convert son to get partition from him is not entitled to as much consideration, as if the dispute arose only between brothers or other co-heirs. The equal interest of the father and son being a creature of the Hindu Law, the convert who has thrown the obligations of that law overboard has no right in equity to invoke its aid in his favour. As against other co-heirs or joint members, his claim stands on a somewhat higher footing, though

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even here, the right in property of the convert is qualified by the general rule that a "Patita" is incapable of taking a share.

13) Though not entitled to share according to the Hindu Law it seems just that the convert's right to take away what was his share at the time of the conversion should be recognised. But the means of enforcing his right are ready in his own hands. He has only to enforce partition before he gives up his caste and religion. The hardship complained of is therefore only of the sentimental sort, and it is hardly worth while to disturb the frame-work of the indigenous law for the sake of redressing what is after all mainly an imaginary grievance. In fact, the learned member who represented the Indian Christians on the committee objects to the proposed legislation as of little practical importance as it considers nothing which the convert cannot at present obtain.

15

14) What then should be the reason for changing the law? The convert is always in a position to ensure that his "vested" rights shall not be lost

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by reason of his conversion. His expectations of inheritance are to be rightly governed by the presumed intentions of the decedent owners, and the law applicable to them; and if they have not made any will in his favour, it is the most valid presumption that they wished to leave it to the heirs under the law to which they were subject. The real hardship occurs in the case only of converts who are unable by reason of their tender age to see how their rights would be prejudicially affected by their neglcting to file suits for partition before their succession. But in their case, the conversion itself would be a grievous wrong and will be hardly approved of by right minded persons

19 I have not said anything advisedly about rights of marriage and guardianship. The former group of rights and obligations is settled both by legislation and judicial decisions in a fairly satisfactory manner. About the latter, though I agree that a father attaches much more importance to his children than to his chattels, I am of opinion that the greatest consideration is due to the

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rights and interests of the child, and that the duties of the father are more important than his so called rights. The difference between the Hindu and other religions is that when once caste (and social status) is lost, it can hardly be regained; and so it is in accordance with justice, equity and good conscience that the father's right cannot be allowed to operate in such a manner as to make the minor son an outcaste. The matter is well brought out in the able judgment of Mr. Justice (Sir) Krishna Murty in Dasappa's case.

See also chapter V of the pamphlet by Tripathi flag C

(b) It is easy enough to advance sentimental grounds for changing the law, and not very difficult to meet them or expose their fallacies. There are very few cases of property dispute between converts and their non-converted relatives, for the simple reason that converts are mostly drawn from the poorer classes of the State. The very fact that the agitation is all to advance their claims to succession and that nothing is said about succession to what they may leave shows that they are not apprehensive of any unfair want of reciprocity. It seems therefore quite unnecessary to create any

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feelings of antagonism between different sects by this interference with the well established laws of inheritance.

17) There is however much force in the observation made in the Residency letter of the 10th April that such legislation would come as a graceful act from a Hindu Sovereign, as the spontaneous effort to remove disunion among his subjects. But the trend of public opinion clearly shows that this will create and foment discord between the two religions, and cause discontent to the vast majority, while only partially satisfying the small minority sought to be benefited. If on the other hand, the matter is left alone, it is most likely that in course of time, natural feelings will be regarded as entitled to more consideration than changes of religions. It would then be easy enough for a father, whose affection for his son is stronger than his love for caste or religion, to dispose of his property in such a manner as to benefit a convert child, in spite of the law disinheriting him. As a rule at present, a son who turns Christian

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or Mussalman against the wishes of the father, shows that he has not the slightest regard for the feelings of that father. His behaviour is not in the eyes of the father less unnatural, than that of the latter if he chooses to allow the law disinheriting the son to take effect as a matter of course. In the disposal of the property left by a man, his wishes and feelings are entitled to more consideration than the expectations (for ex hypothesi, he has no right) of a son or other heir who flouted them and deliberately cut himself adrift.

19 As shown by various persons in the papers in this file, a great many things that were considered heterodox have been accepted as allowable for persons within the pale of caste. With mutual concession and growing respect for each other, it is by no means unlikely that Hindus as a class may become more tolerant of radical changes in faith. This will be shown by less and less of opposition to such changes of law and by a growing usage of mitigating the rigour of the law by means of testamentary dispositions. That will be the proper time to alter the law by legislative enact-

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if it is found that Judge-made law has lagged behind the general sentiment of the community.

19 It remains to notice only one more point. In the Residency letter of 7 July 1909, it is stated that "it would be necessary, in any case, to ensure that the fundamental rights and liberties of British subjects residing in the Mysore State are not exposed to forfeiture, while living in Mysore, on the ground that they held religious views professed by other citizens, but not the views which their Hindu fathers held." In the absence of any express rules on the matter, questions involving such rights and liberties will have to be disposed of, when they arise, in accordance with the established rules of Private International law. As far as I can see, succession to property &c will be governed by the law of the forum to whose jurisdiction the property is subject. This would in all cases supply a just and impartial ~~law~~ rule of conduct. But if it is shown that the rules applicable are inadequate or inequitable, we may bring about such shanges as the British Goverhment

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NOTE—Contn. sheet.

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may advise to be necessary to safeguard the rights of British subjects who may happen to come within our jurisdiction.

(2) Thus it can hardly be urged with any plausibility that the legislation is necessary, either as an abstract measure of justice, or to obviate actual hardship in ~~a large~~ appreciable number of cases. No doubt, this Government in common with the supreme Government of India, is pledged to treat all religious differences equally and impartially. The existing rule of law does not by name condemn Christians or Mussalmans to any penalty or forfeiture It merely says that persons who cut themselves adrift from the Hindu society and decline to be bound by its code or to remain within its pale, shall be subject to certain consequences. (4) Every man is free to do whatever he likes with his property and rights within recognised limits. (5) If he declines to take his share or to accept a legacy or to take property as an heir, the law does not step in to save him in spite of himself. ~~So~~ Nor does it, in ordinary cases, ~~does not the law~~ save him from the effects of any ~~for-~~

NOTE—Contn. sheet.

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forfeiture deliberately incurred. Why then should it do so in this case? An alteration of law as now proposed would not help the comparatively large number of persons who are already Christians. It has been seen by experience that new converts are generally from the poorer classes, and that not even once in ten years does conversion take place of an individual who can hope to obtain a share of any patrimony. I do not personally know, in all my experience in the State, of a single case in which the existence of this rule has deprived any convert of any property. The rule applies as much to converts to Mahamadanism as to those going to Christianity. If the former do not care to agitate for a change and do not feel any humiliation on account of the existence of such a rule, why should the latter make a fuss over a virtually sentimental grievance, and agitate for a change of law which is applicable not to themselves but to the Hindus? If such a law is passed, it would be difficult to show that it is not meant as a direct help and incentive to conversions from Hinduism. With great

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deference, I beg to question whether the supreme Legislature would consider it right to pass such an Act as XXI of 1850 at the present day, and whether a Native Ruler (Hindu or Mahammadan) may, in the teeth of such wide spread opposition, fairly be expected or called upon to bring about an alteration of such doubtful justice and expediency in the law of inheritance governing the vast majority of his subjects.

H. V. Nanjundayya
26/10/09

20/10/09

3/11/09

It is perhaps not necessary for me to record my present opinion at this stage more especially as the Draft Regulation is intended to be placed before the Legislature Council

6/11/09

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Whatever may be said about the general question of the removal of the Civil Disabilities of Native Christian Converts in the Mysore State, there is not much room for a difference of opinion on the question raised at the end of the Residency letter of 27th July 1906 — viz — the necessity to safeguard the "fundamental rights and "liberties of British Subjects "residing in the Mysore State" My learned Colleague Mr. Ranjundaiya makes out that according to the rules of Private International Law, succession to property is in such cases will be governed by the law of the forum to whose jurisdiction the property is subject. This means that a British Indian Subject who is a convert while living in Mysore, forfeits his rights as a British Indian subject

which are

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inherent in him by virtue of Act XXI of 1850, by reason of his being a Convert — a Consideration which imposes no disability on him in British India. The mere fact of his residing in the Mysore State ought not to curtail his rights & liberties as a British subject. It is bare justice to allow him to enjoy such rights as are specially guaranteed to him in British India. Why should he not carry his personal law with him? Even under the Hindu Law, a Mithakshara Hindu, though living in Bengal, is governed by Mithakshara and not by Dayabaga (the law of the land). Such being the case, cannot the same principle be held applicable to a British Indian Christian Subject residing in Mysore? I hardly think that this

NOTE—Contn. sheet.

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small instalment of Justice can be denied to the Indian Christian Subjects of His Majesty the King Emperor.

23 If the law is as interpreted by the second Counsellor, I think a resort to legislation would be quite proper both in the interests of Justice & fair play and a sound policy.

B. H. Hammond
30th January 1910

26

GPB—50.000—18-5-08

D. O. No. 7648

GOVERNMENT HOUSE,
MYSORE.

Jan. 30

Dear Mr. Ramana Rao

I am so
sorry to hear that
you are ready
to start that the
funeral attack
was from pen.

The article in today's

Natal Mercury reminds me that

I have not yet received

from the Durban

Corporation any reply about the

advertising action

to be taken in

Re matter of

Christian Disabilities.

Yours sincerely

Sam Fraser

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D. O. No. 661/1 file Rec'd 31/12/10

25.

My dear Sir

As you will observe from the annexed D.O. from the Hon'ble the Resident ~~Secretary~~ Secretary when he was on a flying visit to Mysore there is no need for a formal answer to the Residency letter of 27 July 1909 & Native Assistants Establishments in Mysore.

2. The answer has been delayed owing to the non receipt of ~~Memorandum~~ Memorandums on the "British Subjects" branch of the question

There came to hand only this
morning, & as you will
observe from pages 20 & 25
of the notes on the file the two
Councillors are not quite in
agreement.

3 Annexed to this is
the draft of the proposed non-committal
letter of reply
which if approved by W.H.
may issue for the signature
of the Secretary of

4 - To save you the trouble of
handling a the walking file
I send herewith only the
Revd letter awaiting

Annex The Space
Rules Agreement Minutes

Yours

Ellis

3. V. 1920

R. W. Chamberlain Esq JCS

Mc Levy Esq DNT

URGENT.

7

D. O. No. 7649

Please return early (for the Resident to be asked if this is true of the Coorgs)

PRIVATE SECRETARY MYSORE

The Palace, Mysore,

2nd February 1910

00/38
Encl file

My dear Sir,

I return the draft letter to the Residency re Native Christian Disabilities. His Highness approves of the draft with one or two modifications which I have inserted.

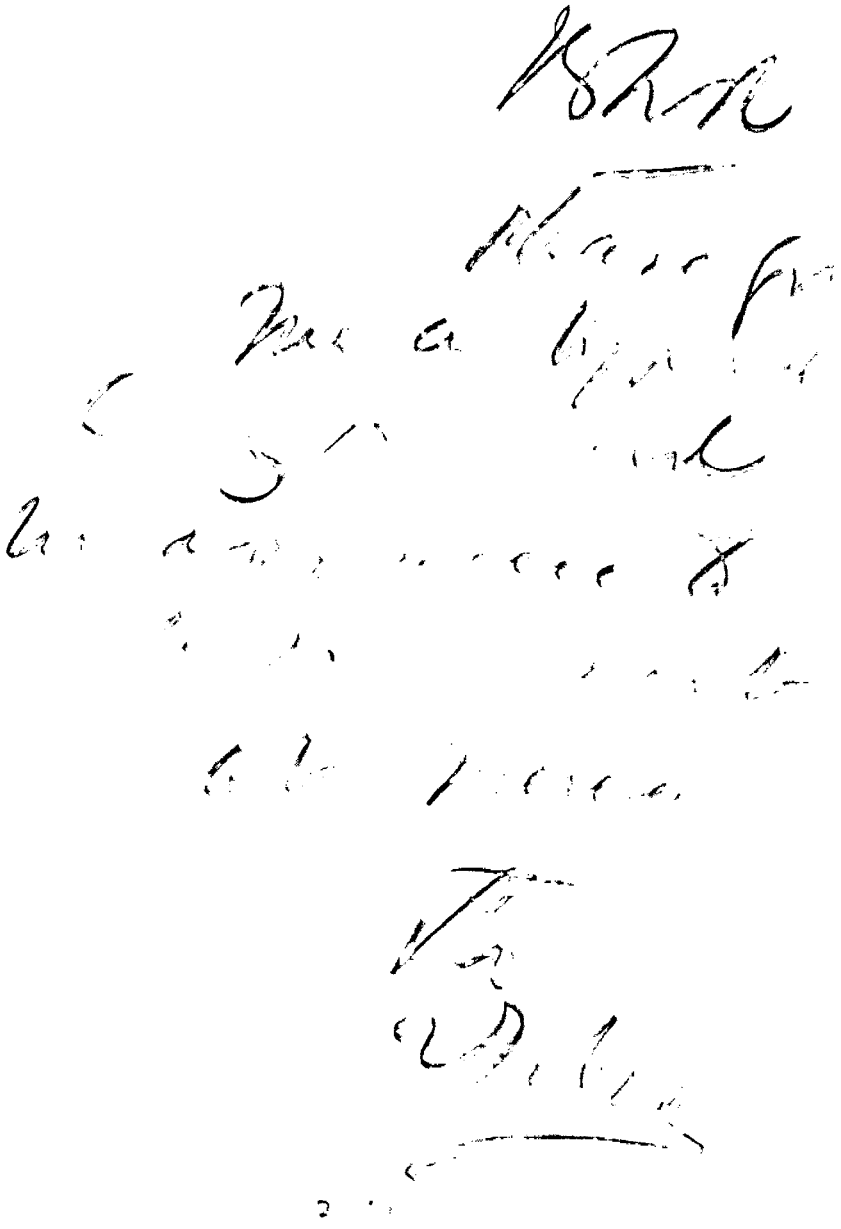
Yours sincerely

T. Ananda Rao, Esq., B.A.,

Dewan of Mysore,

Mysore.

For Dewans orders please see last page



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Please issue the draft approved by the Dewan today

C.S. Srinivasa Rao 4/2/10

SK 4/2/10

Issued.

Shall this be circulated to Councillors?

Yes.

Submitted to Councillors

forms 3

3/2/10

Seen

7/2/10

3/2/10

8/2/10

30

31) The Dewan directed me personally to take further steps in view to placing the draft Bill of 1903 before the Leg. Council

SC 2. No. Pol. 608 & 4/2/10 to the A. Resident

Forwarding 4 printed copies of the decree of the Durbar case and states that the question of legislating on the matter will be considered in the Legislative Council in due course and that the question of the rights of British subjects residing in the Mysore State will be considered after the question of legislation has been disposed of & decided in the Legislative Council

Rs. 7-2-0

2773

NOTE—Contn. sheet.

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a Draft Do. to the Resident is accordingly sent intimating the fact

3) Mr Narayana Rao Govt Advocate will be asked to take charge of the Bill

As directed by the Dewan

33) Draft may be approved

6/1/10 S. Srinivasa Rao

Dewan thro 2nd C.

3) I had not had the full file before me when I wrote the above. Looking at the previous papers it is seen that the draft Bill of 1903 does not contain a Statement of Objects and Reasons (as it had to be published in a hurry). I have proposed in 2nd which may be approved I have said that the Govt propose to place the Bill published in 1903" before the Mysore Legislative Council for Consideration. The words underlined seem to be necessary in view of the non committal attitude of the Govt

attention is invited to the passage in the Dewan's address to the D.R.A. 1909 Hag Ex

35) Mr Hobbs the Resident in vide ref

31

G. R. S. 12]
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the Concluding portion of his D.O. of 10th April 1909, to make a formal declaration in the Statement of objects and reasons about the policy of His Majesty's Govt in undertaking this legislation viz "to remove one cause of dissension among Indians which constitutes the chief and ultimate bar to the realisation of Indian ideals". I have not included this in the Statement as there are no specific orders.

(3) In the Bill itself, I think two small changes appear to be necessary.

(1) In the preamble the words "is called" in the first line on p. 2 may be changed into the more usual and appropriate form "may be called"

This alteration may be made. SB

(2) Illustration (c) of clause 3 of the Bill seems to be founded on a legally impossible supposition. A can not marry ~~B simply because he~~ ~~has a wife~~ - and his wife Even though becoming a Muhammadan - so long as his first marriage with the Christian wife is not dissolved (by divorce or by her death). The reason that a Christian can

A will no doubt commit bigamy by such an act - But such cases are likely to arise - the illustration may perhaps remain & need not be interfered with at this stage.

3 L

NOTE—Contn. sheet.

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monogamous
his obligations (even when not performing) towards his Christian wife can not be shaken off by him by becoming a Muzsalman (Please see p. 829 Nelson's Penal Code) The illustration presupposes legal the validity of such an act on the part of A and may, therefore, I think, be omitted with advantage

37) If these suggestions are approved Slight changes will be made in the drafts post up & with Copy of the Bill to be forwarded to the Resident.

12/2/10. Sd/- Nagendra

See 7) 39 Draft bill with Statt of Objects & reasons is subd to Dewan through 2nd Cr

Sd/- Nagendra 15/2/10

4 6004 17.2.10 39

15/2/10 33

39 Please see Dewan's Order on the draft letter to the Residency.

He directed that steps may be taken to place the Bills before the Legislative Council

Sd/- Nagendra 18/2/10

40 Asst Secy Bills

1) Please take Dewans orders as to who shall be in charge of the bill. It may perhaps be published without formal leave to introduce being taken. Please take order about this also

Sd/- 21/2/10

The Dewan told me personally that (1) the bill is to be entrusted to Mr Narayanan (vide para 32) and that as this is no hurry, the usual procedure (of taking leave) may be followed. For discussion in the Council the next meeting

None Contn. sheet.

GPB—55,000—27-4-09

Serial No.

2 ~~Pol. Dept.~~ To the Resident in Mysore

No. Pol. 628 dated 9/12/10.

Forwards three copies of ~~printed~~ the record in the Dumbar case. Notes that the measure will be dealt with in the Legislative Council ~~in due course~~ and the result communicated to the Residency in due course. and that the question of the protecting the rights of S. Indian Converts residing in Mysore will be discussed after the result of the deliberation of the bill in the Leg Council is known.

3 From the same No. 889 dated 12/12/10.

Notes that the further Communication promised in the above will be awaited and ~~requests~~ to be furnished as already desired with particulars of any case similar to the Dumbar case which occured during the administration of the State by the Govt.

Leg's remarks 13/12/10:—

42. To Asst Secy for III for needful. It would perhaps be useful to compile a Collection of cases under the S. Indian Act in addition to the cases in Mysore. 34

43. Secy. A Collection of Cases under the Indian Act is being made.

44. As regards cases ~~of~~ if any, which have arisen in Mysore. Corresponding to the Dumbar case

NOTE—Contn. sheet.

BPG—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

Rule No. 28 of 1909-10

Serial No.

during the days of the British Commission
it is to be stated that the reports of
Cases decided in the State date only from the
year 1876 and ~~the decisions~~ the reports
between that year and 1881. do not show
any such case. As will be seen from
the printed Compilation of papers on the
subject of removal of disabilities of Native
Chiefs no Cases of claims on the
part of such Chiefs either in regard to
the right of property or any other kind of
right had come to notice till 1873, and
as is already known this Compilation
~~supersedes~~ ~~Compilation~~ ~~Speed Broadfoot~~
~~has~~ gives the history of the subject after
this period. Mention is however made in
the last page of the Collection of a Case
which occured in Mysore in which there
was some real hardship. But this does
not show when the Case arose. The letter
of the Dept quoted wherein the facts of
the Case are said to have been explained
is not forthcoming in the file of papers
now put up. It may perhaps be found in
the D. O. Collection. If any prescribed depart
from the Dept Rules will have to applied
for in regard to this. It does not seem
to be possible to find out Cases of this kind

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

in question from the records of this office. The Privy Council may perhaps be accordingly requested to ~~forward the~~ furnish first with information on the point either from its own records or from the records of its subordinate Courts. Submitted with a draft for approval or for other orders.

25/2/10.

25/2/10 45 To the Council Section to kindly state if there are any papers relating to the Case mentioned in the last page of the printed Memorandum.

25/2/10

(To Secretary)

Said Privy Council Leg.

h/s Council collection no 98 bearing on the subject has already been put up with the main file. There are no other papers in the Council almirah

26/2/10 (1) Issue the draft [illegible]

47 to the Ch. Cl.

(2) After [illegible]

NOTE—Contn. sheet.

GPB—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

Legis. File No. 28 of 1909-10.

37

Serial No.	
	D.C. of Mysore Supply information about the representation of the Roman Catholic Bishop rejd to on the last page of the printed Collection.
	28/2/10. Issue the draft. 2/3
	Legis. Please put up draft.
	SW 1/3
	~~Draft for~~
	Subd. with a draft to Dy Comm= Mysore
	4/3/10 4/3/10 Macdonald Send the printed Collection. alter the draft suitably and submit 5/3/10
	Legis. 5/3
	Subd. with an altered draft.
	Rec'd on 5.3.10 5/3/10 5/3 Issue Mysore 7.3.10
	DWS 14/3/10 Draft to the Registrar of the High Ct. and D.C. Mysore is sent.

37

NOTE—Contn. sheet.

GPB—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

File No. 1 of 1909-10

Serial No.	
4	To the Registrar of the Chief Ct. Mr. J 2838 28/2/10
	Reports him to furnish for the information of Govt particulars of Cases if any similar to the Timber Case which occurred in any of the Courts during the administration of the State by the British Commissioner.
5	To the Deputy Commr. Myme. Mr. J 2838/28/2/10
	Reports him to forward a Copy of the letter from Pyinmana explaining the circumstances under which a real Case of hardship arising out of Conversion to Christianity is said to have occurred in Myme.
50	As desired by the Assistant Secretary draft of a D.O. to Mr. S. Ranagun Bar. for Advocate, forwarding the file and requesting him to take the necessary action with a view to the prosecution by them of the petitioner for approval.
	51 Issue draft.
	12/3/10
52	The file has been returned and the following letter from the Deputy Commr. Myme has also been received
63	From the Deputy Commr. Myme. Nr. 605

NOTE—Contn. sheet.

BPG—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

File No. 26 of 1909

Serial No.	
	17/2/10.
	Forwards the draft of a D.O. addressed by him to Govt. in 1901 and referred to in the printed Collection
	5. The Communication refers only to ~~cases~~ Cases of Compensation payable to certain Native Indian Contractors in the Mysore city which arose in 1901 perhaps in connection with the schemes of the Mysore City Improvement Trust Board and hence do not seem to be relevant to the information called for by this Residency, as they want Cases particularly which occurred during the Commission days. Perhaps the information called for from the Chief Court may be awaited.
	54. Submitted with a Collection of Cases decided in Courts under Act XXI of 1850.
	24/3/10 24/3/10 Await receipt of info from the Chief Court
	28/3/10.
	From the Registrar of the Chief Court of Mysore No. 4616/27/D 25th April 1910
	States that no Case similar to that decided by the Munsiff of [illegible] in O.S. No.

NOTE—Contn. sheet.

BPG—55,000—27-4-09

G. R. S. 12]
General and Revenue Secretariat.

Dy. File No. 28 of 1909-10

Serial No.

1016 of 1908-09 has been filed either in the Chief Court or in the Court of the Judicial Commissioner or in any of the subordinate Courts.

5. The Residency has to be informed of this. Draft with a draft for approval or for other orders

28/4/10 28/4

5-7 Draft may be approved

29/4/10

The draft may be approved.
(The Chief Court came into existence only after the Rendition)

3446
5942
5-5-10

30/4/10

30/4/10

30/4/10

(F.)

4/5

Legal for instructions

30/5

40

NOTE—Contn. sheet.

BPG—55,000—27-4-09

SUBJECT No. 9.

The Converts' Disabilities Removal Regulation.

Messrs. A. Ramanna, Yedatore Taluk; K. Krishnamurti Rao, Magadi Taluk; Amble Anniah Pandi, Mysore District Board; Moulvi Dervish Peer, Anjuman-i-Himayath-Islam, Mysore; and others.

R. A. 08-9.

Summary of discussion.—A Regulation enabling Hindu converts to other religions to inherit the properties of relatives who remain as Hindus, should not be passed, and the present law on the subject should be retained as it is.

2 *t*

The idea embodied in the Regulation is repugnant to all the notions on which the devolution of property according to Hindu Law is based. A son who did not worship his father's gods could not claim his property as the Hindus believe that it should descend only to those heirs who would keep up the family custom. The position of the convert was very illogical as he wanted only the benefits of his inheritance without the corresponding obligations. Further the cases of conversion are very rare and do not justify legislation against the unanimous opinion of the public. The proposed legislation is inconsistent with the policy of religious neutrality laid down in the Queen's Proclamation of 1858, and reiterated in His Majesty's Message in 1908.

One member expressed a fear that the Regulation might be passed in spite of public opinion if the official majority voted for it, and the Dewan remarked that it was not the intention of Government to treat the measure as an official bill which the official members were bound to support. The official members would be allowed the liberty to vote according to their own individual opinions.

In response to a call from the Dewan for the views of the Mahomedan members of the Assembly, Mr. Dervish Peer said that the Koran disinherited all converts and that even a convert to Islam lost all his pre-Islamic rights. The Mahomedans were against the proposed measure and joined the rest of the Assembly in protesting against it.

Mr. Pilkington, who was invited to express his opinion, stated that he recognized that there was a strong body of public opinion against the measure; but Hinduism, more than other faiths, was always tolerant of other beliefs. The present law interfered with liberty of conscience and was unworthy of the best traditions of Hinduism. He thought that a child's birth-right should not be taken away simply on account of a change of religion, but the father had a full right to will away his personal property from the son, if so disposed.

One of the members stated that there was not a single person in the Assembly who would support the measure; and the whole Assembly stood up as agreeing with the statement.

Reply of Government.—Noted.

G. R. S. 12]
General and Revenue Secretariat

File No. 25 of 190 Gen

Serial No.	
68	No Pol. 972 dated 18th May 1910
	To the F.A. Resident
	Informs. him of the above (vide 67)

Contn. sheet.

GPB—55,000—27-4-09

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent recor

J 3050.

Residency Letter No. 3662 dated
16th June 1910 (C

Reports to be informed,
for the information of the Govt.
of India, when the further Com-
munication promised by the
Durbar on the matter of the
Govt. steps for the removal of
disabilities of the Native
Christian Converts may be
expected.

It looks as if a Copy of the
letter has been forwarded to
the Dewan already for infor-
mation by the despatching
Office.

May the Dewan be in-
formed that the Bill will
be placed at the early meeting
of the Legislative Council
which will be arranged as
soon as possible after the
present Marriage festivities
are over.

This depends on the deci
for the meeting of Council. The
Dewan told me that he would
fix a day & let me know
15/6/10

N. B.—Should routine notes be written on small Slips, the notes must be copied, or silps pasted on this form.

MGCPB—50,000—22-9-04

Contract Disabilities Removal Regn 2h

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

6 Rubber Stamp through
2nd Cl. Subramaniam
27/6/10

28/6/10

4101.

29/6/10

6738
27-10-2 Please reply as above
Affected provisions indicated
4/7/10

6 3 Putuk draft
C.S. Subramaniam
5/7/10

6 4 Draft-submitted
TM 24.7
5/7/10 65 — Issue
43
5/7/10

Submitted with the
Draft- & fair typed copies
Sect.
TM
5/7/10

22/7/10

N. B.—Should routine notes be written on small Slips, the notes must be copied, or slips pasted on this form.

MGCPB—50,000—22-9-04

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

44

N. B.—Should routine notes be written on small Slips, the notes must be copied, or silps pasted on this form.

MGCPB—50,000—22-9-04

Serial No.

66. The Legislative Council to whom the Bill for the removal of disabilities arising from change of religion or deprivation of Caste and prepared in 1908 was referred has agreed to consider the measure, even though fresh notice for the measure being placed before that body for consideration & opinion has now to be sent to the Residency Govt for orders with a copy of abstract Proc dtd 29/8/10. of the last meeting of the Council

SN 29-8-10

67. (1) I have put up a draft to the Residency, adopting the important arguments urged against the measure.

(2) Regarding the applicability of the Illyrne Law to Converts with a British Indian domicile, the law of Succession applicable to them is the law of the Country where the property is situate ("Lex Situs") in the case of immovables and the law of the country of domicile in the case of movables. The latter obviously calls for remarks. In the former case, the "Illyrne" law will have to be applied to the Converts in question but as there is

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

Extracts from the proceedings of the D.R.A. of 1906 & 1909 are proposed to be sent with the draft letter.

Sd

Attention is also invited to p. 109 of the Harvest Field (for March 1910) a missionary [illegible] magazine.

Sd

Books proposed for reference:
1) Dicey's Conflict of Laws
2) Wharton's do
3) Mayne's Hindu Law
4) Harvest Field - a periodical.

Sd

No law in Mysore of general territorial application in matters of Succession &c which can be called the "law of Mysore", the Courts will have to apply the [illegible] in law of domicile in this case also, that is, the law applicable to the domicile in British India.

14/9/10

Sd Narayanaiya

Sd

Serial No.

A draft letter to the Residency is put up. I beg to invite the Dy C's attention to para 14 of the draft regarding British Indian Converts in Mysore.

Dewan Thro' Dy C

C.B. Saunders
Dy C
19/12/10

Sd
19/12/10

I have made certain alterations in pencil, chiefly to remove redundant passages.

The view that the law of domicile of a foreigner would be applied even in cases of succession to immoveables cannot be correct. It is not true to say that there is no territorial law in Mysore. It is Hindu law to a Hindu & Mahomedan law to a Mr &c, and the Hindu Law is what is in force here as such, that will have to be applied.

The last Para is not sufficient. Please enlarge it in the light of remarks contained in my Speech & elsewhere. I believe the Residency has nowhere conceded that it would be sufficient

NOTE—Contn. sheet.

HPB—55,000—27-4-09

Very

Some thus seems the
Allright — I have
no suggestions to make —
Please show Mr. Saunders
also for suggestions Yours.
Then let it be
retyped with marks
& sent to me for return
for Mr. Ashmead

Mr. Agnew

Please see below

A. (5.5 pm)

4.8

G. R. S. 12]
General and Revenue Secretariat.

Yes File No. 44 of 1910

Serial No.

& we provided only for property rights.

H H Vaniyambadi

20/12/10

73 Subd to Dewan as appd by order finally

S Venugopalachari

3/1/11

9553
4.1.11

XX

75. With reference to the Dewans note of yesterday, I beg to state as follows:

It seems to me that the draft goes into reasons too fully. The question has been under agitation since the year 1894 and Sir K Sheshadri Iyer had made a draft of proposed to legislate in the matter. Sir P N Krishnamurti too was in favor of such a course. A Committee was appointed in 1905 which recommended

page 11 of the proceedings of the Legislative Council & page 26 of the printed Collect.

NOTE—Contn. sheet.

GPB—55,000—27-4-09

119

G. R. S. 12]
General and Revenue Secretariat.

File No. 28 of 190

Serial No.

The removal of some of the disabilities by means of legislation. A bill was drafted but no further action was taken. In the meantime a Legislature Council was created for mysore and the bill had necessarily to be placed before it. The attitude of H H the Maharaja's Government should be one of neutrality and not inconsistent with the past history of the case. It is unnecessary and inexpedient for the Govt to range itself on the one side or the other and espouse any particular side. The reasons pro & contra are fully given in the discussions which have taken place in the Council. In my opinion it is sufficient to refer to them in a general way instead of making them appear as the views of Government.

50

GPB—55,000—27-4-09

(50

G. S. 12]
General and Revenue Secretariat.

File No. 8 of 1911

Serial No.

The reasons given in the Dept letter are a reiteration of those urged by the Opponents of the measure and they should not go forth as the opinion of H H the Maharaja & his Government. We are not averse to legislate if we can carry reasonable public opinion with us. This should be our attitude

H H Matam
6/1/11

File resubd to Diwan with a fair typed draft as personally directed.

SB
6/1/11

9612
6.1.11

57

NOTE—Contn. sheet.

GPB—50,000—12-8-10

51

Submitted to His Highness.

76. I submit herewith two alternative drafts of a reply to the Residency on the subject of legislation for the removal of the disabilities of Christian Converts.

Drafts A & B.

Page 47 of Office notes.

2. The draft marked "A" goes into a discussion of the merits of the question and has been approved by the Second Councillor. The First Councillor in his minute dated the 6th instant has urged the desirability of sending a non-committal reply. There is much force in what he has written, and endeavour is made to adopt this idea in draft "B".

Pages 48 – 50.

3. We have been receiving repeated D.O. reminder from the Residency for the Durbar's reply in this matter.

ku.

52

Yai draft

Draft. A

To

The First Assistant to the Hon'ble
the Resident in Mysore.

No.

Dated

S i r,

I am directed to refer to the correspondence ending with my letter Pol.No. 648 dated 4th February 1910 on the subject of the disabilities of Christian Converts in Mysore and to state as follows:-

Flag X

2. As observed in para 3 of that letter, the Bill prepared in 1905 by Mr.Staley's Committee was placed before the Legislative Council at the meeting held on the 15th August 1910 on a motion for leave to introduce the Bill, but the Council after considerable discussion felt that there was no chance of such a law becoming acceptable even after further consideration, and rejected the motion. I am to enclose herewith a copy of the report of the proceedings for information. In the

circumstnaces

circumstances, the Durbar feel that they would not be justified in proceeding with the measure further.

Flag O

3. As desired in para 5 of Mr.Copeland's letter No.4936 dated the 27th July '09 I am directed to state the following reasons that have weighed with the Durbar in arriving at this decision.

4. The intimate connection between religion and social and legal relations has not become obsolete in this country; and influence of caste, which has even affected Christians and Musalmans is all but paramount.

5. A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former social ties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations ar friends of the same caste will even dine with

him

dog 7 18 gij - 8

take from his hands

him or ~~drink~~ water ~~touched by him~~.

his

If children fallow him into the new faith, they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes, but in every caste whether high or low.

6. It is this close association between religion and social life that compels the Hindu to look at the Bill in qusetion from a point of view entirely different from that of an outsider who, may consider the matter from an abstract standpoint.

In Hindu Law, the inheritance of property is intimately connected with the performance by the heir, of the obsequies of the deceased owner. Whatever may be the criterion

for

for determining the order of succes-
sion according to the Hindu Law as
in force in Mysore- whether it is
the principle of " Consanguinity"
or the principle of " Religious
efficacy "- it is admitted on all
sides that inheritance and
the performance of spiritual rites
are very closely associated with
each other. It is therefore impos-
sible to alter the Hindu Law of
succession without at the same time
affecting the Hindu religious and
social system on which it is based.
In the view of a Hindu, to grant the
rights of inheritance and succession
to a person who has given up the
Hindu religion and his caste and has
thereby rendered himself incapable
of performing the ceremonial duties
due to his deceased ancestors and cut
himself off from the society in which
he was born, would be to allow him
the enjoyment of the privileges of

of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

7. Regarding the disabilities themselves, it has been sometimes stated by the advocates of the Convert that his position is analogous to that of an outlaw. It needs very little consideration to show that this is a gross exaggeration. It is needless to point out that in Mysore, as elsewhere, a convert to Christianity enjoys as much protection to his personal property as any of his fellow citizens professing a different religion. As a Christian, he is not prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a Musalman as

such

such, which are allowed- as in British India- to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights peculiar to the status which he has abandoned by his conversion and affecting others who remain Hindus or Musalmans as the case may be.

8. The few disabilities of the convert arise not out of any enactment passed by the Government of this State, but as a consequence of allowing each community to be governed by laws peculiar to itself in certain matters. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is sometimes represented. So far as ancestral or joint property is concerned, the convert can effectually secure h erein by exercising, prior to his conversion

his undeniable right to enforce a parti-
tion of the family property. His own
self acquisition he can always take with
him. It is pnly the right of inheritance
strictly so-called, that is, the right
of succeeding to property left by a
decedent owner, that the Hindu Law
does not concede to the convert. Rules
of Intestate succession are in all
systems of jurisprudence based on a view
of the decedent Owner's natural inclina-
tions as to the devolution of his pro-
perty, presumed from the known usages,
ideas and even prejudices of the society
of which he was a member. Taking
the present state of Indian society
into consideration, it would seem
to be a more valid presumption that a
Hindu owner would not of his choice
leave property to a son or other
relative who has forsaken his caste and
religion. In exceptional cases, a
father or other owner would have the

power

power of setting aside the general rule of exclusion by means of a will, just as if the proposed law were passed, he would be able to exclude its operation in a similar manner. The disabilities suffered by the converts to Christianity such as they are, are not peculiar to them and could not have been specifically aimed at them, as at the time these laws were instituted Christianity was unknown in India. The Hindu Law disqualifies from inheritance certain other classes of persons besides converts, namely, " eunuchs, persons born blind or deaf, the dumb, lunatics, idiots and persons afflicted with incurable diseases such as leprosy in its worst form". Judged by a strict standard of reason, the class of persons just alluded to, are entitled to greater sympathy and consideration than even the converts, for the latter deliberately take a step which they know would entail a forfeiture of

certain

certain rights. Enlightened Hindus themselves feel that the exclusion of persons afflicted with natural infirmity from inheritance is inconsistent with modern notions of justice, equity and good concience. Nevertheless, there has been no agitation for an amendment of the Law in favour of this unfortunate class of persons for the simple reason that any attempt in this direction is bound logically to result in a reconstruction, in the light of modern notions, of the whole structure of Hindu Law. Such an interference by the State with the laws of inheritance applicable to a large community would now hardly be defensible, unless those laws were manifestly barbarous or worked grievous injustice absolutely without remedy. Similar considerations shew that it would be extremely undesirable to interfere with the rules applicable to rights

61

and

and duties of Guardianship and that in fact it is much more inexpedient to attempt any alteration. The rights and interests of a minor child are much more important than the powers or supposed rights of a guardian, and as social and caste status once lost cannot be regained among the Hindus, it is very important that the supposed rights of a convert parent should be enforced in such a way as not to prejudice the minor's permanent interests. This reservation had all along been made by almost all those officers and others who recommended a change of the law in respect of property.

9. These considerations explain- if they do not altogether justify- the attitude of hostility assumed by the Hindu population of the State towards any attempt to amend the law in the manner asked for by the converts.

62 Neither

Leg 7 25 47 -11.

Neither is the ppposition to the measure confined to the Hindus only. The Mahamedans of this State are equally opposed to any legislation on the subject and this is signifcant in view of the fact that conversion to Islam from Hinduism is not uncommon in Mysore any more than it is in British India.

10. Instances of hardship, consequent on the existence of the provisions of Hindu Law complained against, are very rare as conversions to Christianity from among the property-owning classes seldom occurs. So far there ~~has~~ have been only two reported cases in Mysore in which converts to Christianity suffered any loss on account of their conversion. One of them occurred in 1894 and the other 13 years later, namely in 1907. This extreme paucity of cases of hard-ship renders it difficult to meet the argument on the other side that legisla-tion in favour of the convert is indefen-sible in face of so much opposition from

63

from the great majority of the people of this State.

11. Throughout the period of nearly half a century during which the State was under the British Commission, the provisions of the Hindu Law now complained against were allowed to be administered without a change and in connection with the only reported cases of hardship that occurred during that period, namely, the case of Hutchi, in 1873, the Government of India who were approached on the subject of introducing legislation on the lines of the British Indian Act of 1850 refused on four occasions and once with the concurrence of the Secretary of State to accept the responsibility of sanctioning the proposal when administering the State on behalf of the Maharaja. The Durbar, now acting on their own responsibility, feel that though the specific ground on which the Government of India graciously rested their decision cannot be urged by them, the objections to the

measure on the merits have apparently lost ~~one~~ none of their force and that it is probably on such considerations that the Government of India ~~have~~ felt themselves unable to advise the introduction of any change into the similar provisions of the Hindu Law which are in force in the N ative States of Trvancore and Cochin.

12. As regards the strength and genuineness of the opposition to the measure, it is sufficient to state that petitions signed by about 34.000 individuals (Mahamadens and Hindus) have been received against it as against petitions signed by 2,078 persons (of whom only one was a non-christian) in ~~favour~~ its favour, that the opinion of the Representative Assembly taken on two different occasions (vide extracts appended) namely in 1906 and 1909 was emphatically against ~~it~~ it and that in the Legislative Council a majority of the members refused even to grant the leave asked for for the introduction

of the Bill.

13. In the face of such strong indica - tions of public opinion hostile to the measure, the fact that only very few cases have come before the Courts during a long series of years and the circumstance that other Native States have not found it desirable to adopt any similar legislation, the Durbar feel that they will hardly be justified in pursuing the matter further at present. In these circumstances, they can only hope that with the spread of enlightenment, and the operation of the liberalising influences of modern culture, the social barriers between different castes and religions will be removed and the opposition to the measure will gradually die out and that public opinion will one day welcome instead of opposing the grant of equal rights in matters of inheritance to converts from the Hindu and Mahamadan religions.

14. Turning now to the question of the

Leg 7 28 67 (26

applicability of the provisions of Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operations of the Mysore Law- a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would in the opinion of the Durbar be justly open to the objection that there is no practical necessity for it.

15. It would indeed be difficult to determine in what manner exactly any cases of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British India, as the princi- ples of Private International Law would

67

govern such cases. It is perhaps only in relation to immoveable property that the Local Law may have to be applied so as to bring about a different result from that in British territory; but even this is doubtful and it is ~~probable~~ possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed.

I have etc.,

Offg. Secretary.

Draft. B Leg (C
28 [illegible] 10
No. Political 718 & 31-1-11
Sec 3

To

The First Assistant to the Hon'ble
the Resident in Mysore.

Sir,

I am directed to refer to the correspondence ending with my letter Pol. No.648 dated 4th February 1910 on the subject of the disabilities of Christian Converts in Mysore and to state as follows:

2. In accordance with the intention expressed in para 3 of that letter, the Bill prepared in 1905 by Mr.Staley's Committee was brought before the Legislative Council at its meeting held on the 15th August 1910 with a motion for leave to introduce the bill, and with the intimation that it was not a Government measure in the sense in which that term is ordinarily understood and that official members were at liberty to vote on the motion according to their independent judgment. As will be seen from the enclosed copy of the report of the

69

9 Jan 11

Draft as finally altered by H.H
Reg &c.

Signed by Mr. S. Balasundaram Iyer
Dating Stone - 31st Jany 1911 -

proceedings, the Council, after a lengthy discussion, rejected the motion.

3. The attitude of His Highness' Government at present in regard to this matter, I am to explain, is one of strict neutrality. It may be that the proposed legislation, if given effect to, may not result in any harm, as none has resulted in British India from the passing of Act XXI of 1850. But His Highness' Government cannot shut their eyes to the fact that there is very ~~considerable~~ strong & deep-seated objection on the part of the public to the proposed legislation. This has become manifest ever since the publication of the draft Regulation in 1905, and it is a significant fact that the opposition to the measure is shared by the Mahomedan, equally with the Hindu, population of the State. As regards the strength and genuineness of this opposition, it is sufficient to state that petitions signed by about 34,000 70 individuals (Hindus and Mahomedans) have been received against the

measure, while the number of signatories to petitions in favour of it was only 2078, (of whom only one was a non-Christian), that the opinion of the Mysore Representative Assembly taken on two different occasions (vide extracts appended), namely in 1906 and in 1909 was emphatically against the measure, and lastly that the Legislative Council refused even to grant leave for the introduction of the Bill.

4. The grounds of this opposition on the part of the public may be briefly stated to be as follows: A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former social ties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations or friends of the same caste will even dine with him or take water ~~from~~ at his hands. If his children follow him into the new

they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes but in every caste whether high or low. The above described close association between religion and social life prevents the Hindu from looking at the Bill from the purely abstract standpoint. In Hindu Law the inheritance of property is intimately connected with the performance by the heir of the obsequies of the deceased owner. Whatever may be the criterion for determining the order of succession according to the Hindu Law as in force in Mysore - whether it is the principle of "Consanguinity" or the principle of "Religious efficacy" - it is admitted on all sides that inheritance and the performance of spiritual rites are very closely associated with each other. It is therefore impossible to alter the Hindu Law of succession without

at the same time affecting the Hindu religious and social system on which ~~it~~ that law is based. In the view of a Hindu, to grant the rights of inheritance and succession to a person who has given up the Hindu religion and his caste and has thereby rendered himself incapable of performing the ceremonial duties due to his deceased ancestors and cut himself off from the society in which he was born, would be to allow him the enjoyment of the privileges of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

~~6~~ 5. It is doubtless true that much of this opposition is due to nothing more than sentiment; but it is equally true that many of the arguments in support of the proposed legislation are also based only on sentiment. In Mysore as elsewhere a convert to Christianity enjoys as much protection to his personal property as any of his fellow citizens professing a different religion. As a Christian he

prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a Musalman as such, which are allowed - as in British India - to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights which are peculiar to the status which he has abandoned by his conversion and ~~affecting~~ which affect others who remain Hindus or Musalmans as the case may be. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is some times represented. So far as ancestral or joint property is concerned, the convert can effectually secure his share therein by exercising prior to his conversion, his undeniable right to enforce a partition of the family property. His own self acquisitions he can al

N.B. To be printed

take with him. It is only the right of inheritance strictly so-called, that is, the right of succeeding to property left by a ~~descendant~~ decedent owner, that the Hindu Law does not concede to the convert.

6 X. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favour of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No.4936 dated the 27th July 1909. This judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon. But even ~~here, the philosophic mind will be able to perceive that~~ the fact that the position of the felon happens in this respect to be better than that of the convert implies no stigma on the latter. It only means that the ~~one~~ felon is not ~~the other~~ a convert.

8. With reference to the surmise

X X X that there was one very peculiar feature about the case which so disgusted the missionaries interested that they preferred to let it drop. The fact was that the first and third plaintiffs, who are now looked up as victims to an unjust law, actually brought the suit in the guise of Hindus. They denied on oath that they were Christians and missionary witnesses had actually to be called on the other side to prove that they were baptized Christians. A great deal has been made of the fact that the only successful plaintiff was a Hindu felon and it is only fair to dwell on this other aspect, which deprives the two Christian plaintiffs of all moral claim to sympathy. It is not too much to say that they got only what they deserved when the case as one of hardship was settled out of Court.

The case has been taken in appeal. It is not impossible that the appellate Court would should have held that a murderer (& that too one who murdered a member of the family) was a 'patita' (one who has fallen) & therefore liable to exclusion from inheritance. Unfortunately there was no appeal, & the reason probably was that

Revised para 6
dig 7/6 1/11

6. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favour of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No.4936 dated the 27th July 1909. This Judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon; but if the case had been taken in appeal, it is not impossible that the appellate Court would have held that a murderer (and that too one who murdered a member of the family) was a 'patita' (one who has fallen) and therefore liable to exclusion from inheritance. Unfortunately there was no appeal and ~~the reason probably was that~~ there was one very peculiar feature about the case which ~~so disgusted the missionaries~~ might well have alienated the sympathies of the friends interested in the subject ~~that they preferred to let it drop~~. The fact was that the first and third plaintiffs, who are now held up as victims to an unjust law, brought the suit in the guise of Hindus. They denied on oath that they were Christians and Missionary witnesses had actually to be called on the other side to prove that they were baptised Christians. A great deal has been made of the fact that the only successful plaintiff was a Hindu felon and it is only fair to dwell on this other aspect, which deprives the two Christian plaintiffs of all moral claim to sympathy. It is not too much to say that they got only what they deserved and that the less said about the case as one of individual hardship, the better.

8 Cts forwards

from here forwarded to the Private Secy D. 25/1/11

76

D 25/1/11

Leg & Pol / 1911

7. With reference to the summary expressed in para 5 of your office letter of the 27th July 1909 referred to above, that during the period of the administration of the State by the Government of India, the principles of British justice which were expressed in Act XXI of 1850 may have "sufficed to prevent litigation for depriving a parent of his natural rights over his children or a proprietor of the control of his own property in the case of any Hindu who might change his religion", I am to observe that the decision in the case of Hutchi which was in the year 1873 shows that the law on this subject in operation in Mysore during the days of the British Commission was identical with what it is at the present day.

8 9. In these circumstances, I am to state that the Durbar consider that they would not be justified in proceeding with the matter further at present.

78

9 10. Turning now to the question of the applicability of the provisions of

Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operation of the Mysore Law - a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would in the opinion of the Dur bar be justly open to the objection that there is no practical necessity for it.

10 ~~11~~. It would indeed be difficult to determine in what manner exactly any cases of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British India, as the principles of Private International Law would govern such cases. It is perhaps only in relation to immoveable property that the Local Law ~~may have to~~

applied so as to bring about a different result from that in British territory; but even this is doubtful and it is possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed.

I have &c.,

Offg. Secretary.

80

GOVERNMENT OF MYSORE

D. O. No. 1796/Ex1

Bangalore
9 Jan[y] 1911

My dear Sir,

I am directed to submit by the Dewan herewith an alternative draft in regard to the Converts' Disabilities legislation. He will be obliged by being

favoured with your remarks and suggestions on the draft.

Yours sincerely

Macaulay

K. P. Puttannachetty Esq.
First Councillor

D. O. No. W 2041

Dear Mr Nathan

I think the draft
is quite suitable

Yours sincerely

K V Rattenbury Pelly

10/1/11

Submitted to the Dewan

I have forwarded the
10th a Nyapalli to-day. 1. 11
in hand —

Ananda Rao

D. O. No. 1797/Ed 1

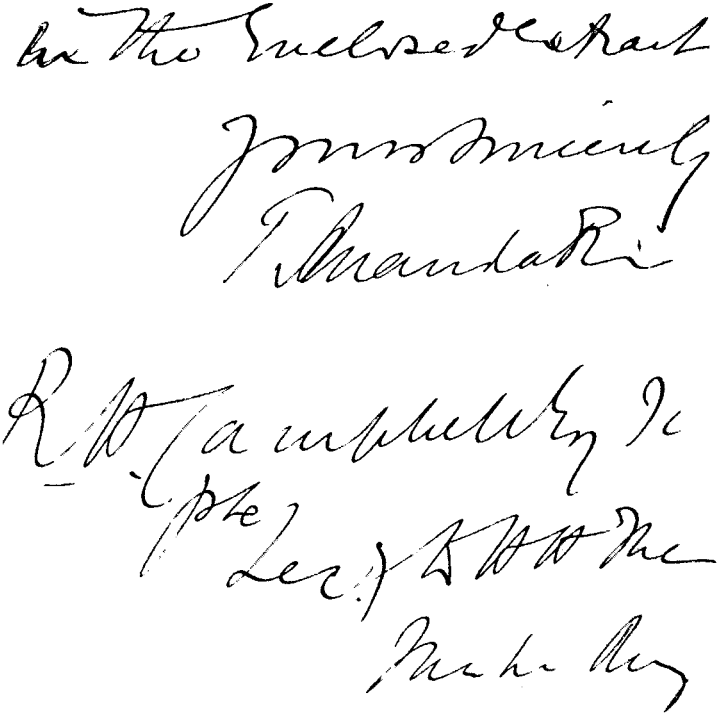
GOVERNMENT OF MYSORE

Dy 7

Bangalore
16 Jan 24

My dear Sir

In that draft which I submitted yesterday for W's consideration regarding Convents' disabilities — it seems to me that para 6 may be altered so as to read as shown



Leg #28 Revised 18/1

Not to be printed.

6. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favour of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No.4936 dated the 27th July 1909. This judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon. But even here, ~~the philosophic mind will be able to perceive that~~ the fact that the position of the felon happens in this respect to be better than that of the convert implies no stigma on the latter, It only means that the ~~felon~~ cannot ~~convert.~~ heir. And if the case had been taken in appeal it is not impossible that the appellate Court should have held that a murderer (and that ~~one~~

There is any stigma

any one than in the case of a person who deceases to the heir to his father's property by being adopted into another family

who murdered a member of the family)
was a Patita (one who has fallen) and
therefore liable to exclusion from in-
heritance.

(51)

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Two alternative drafts of a reply to the Residency on the subject of legislation for the removal of the disabilities of Christian Converts.

Order.

D. No. 240
Dated 21-11-11.

Draft (B) Approved

~~KRW~~
12/1/11

See further D.O. of even No. dated 30.1.11. from P. Leg. to Dewan & D.O. from P. Leg. to Dewan dated 30.1.11. put up with this papers

82

D. O. No. Fr 2046

The Palace,

Bangalore,

21st Janry 1910.

25

My dear Sir,

I return the File relating to disabilities of Indian Christians. As the wording of the draft is of considerable importance, I have taken the liberty of retyping para 6 which has been altered and added to with His Highness approval. You will note that His Highness has recorded his approval of the Draft B but he asks me to say that he approves of the modifica-

tions made in para 6.

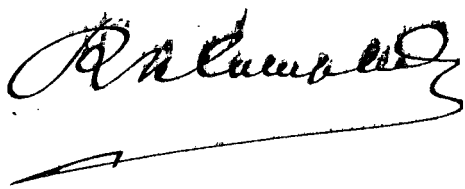
We trust that you also will approve of these.

As regards the remainder of draft the emendations suggested are merely verbal and I have noted them in pencil. If you agree the draft as finally revised may go to the Residency.

I think it well to emphasize that particularly ~~disgraceful~~ a discreditable case the rumour one was from the point of view of the impartial observer and why the Missionaries refrained

from taking the case up on appeal. So much has been made of the case by the Missionary bodies that it is just as well to let the Government of India realize the very sordid aspect of the case in the shape in which it was put before the Munsiff's Court. It would be a mistake to let the 1st & 3rd Plaintiffs go down in Official history as high-souled victims of Hindu caste prejudice.

Yours sincerely,



T.Ananda Row Esq.,C.I.E.,

Dewan of Mysore.

D. O. No. 1852

30 Jan (21)

Cover slips on back

file

My dear

In the matter of the Bill

Ugly due to the Residency on the 30.1.11

question of the Convents' Disabilities -

Para 6 of the draft B as

approved seems to be all right in

the main, but it seems to me

that some verbal alterations

are called for as indicated

with red ink on the slip here

below -

85

Unfortunately
there was no Appeal
from the decision probably
[illegible] that there
was one very
peculiar feature
about the Case
which [illegible] might well have
alienated
the sympathies of
[illegible] interested
in the legal
[illegible] that they
[illegible] & left it
[illegible] — The fact was
that the first & 3d
Pltfs who are now
held up as victims
of an unjust law
brought the suit in
the spirit of Brutus —

As a matter of fact we would know why there was no appeal - Mr Rees says that it was because he had gone home - And when the idea was discussed after his return, appeal was time barred - He also suggested I think that the late Lennan was averse to an appeal - & so on -

We must leave the two facts without connecting them as cause & effect, viz the fact of there having been no appeal, & the fact of the peculiar feature in the case - The inference will be left to the reader to draw as he may see fit -

86

We have not another

D. O. No. Fr 2048

PRIVATE SECRETARY MYSORE

30. 1. 11

To the Seer
for kindly having
the draft as now
revised typed early

31.1.11

J. Ramachandra Rao
31/1/11

My dear Sir

I return the Enclosures
Papers. His Highness
approves of the modifications
which you suggest in Para 6

Yours Sincerely

R. Lamachandra

30 1. 11.

87

G. R. S. 12]
General and Revenue Secretariat.

File No. 28 of 1909-10

Serial No. 9

No Pol. 718 dated 31st January 1911
to the First Asst to the Hon'ble the
Resident in Mysore, Bangalore

~~Incl Gives a summary of the reasons~~ States that the Bill was brought before ~~considered at~~ the Legis council meeting held on ~~dated~~ 15/8/10 with a motion for leave to introduce it but that the Council rejected the motion, gives a summary of the reasons that led the Council to do so and states that on account of the decided opposition by the Public against the Bill the Durbar consider that they would not be justified in proceeding with the matter further at present and that as regards the desirability of protecting the rights of the British Indian convert residing in Mysore states that such cases of conflict of law are not likely to be of frequent occurrence in the future to be and that it is possible the courts may find a way of avoiding a conflict when such cases do occur and that therefore the Durbar feel that for such an exceptional and almost imaginary case, no special legislature is at present needed.

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Progs headings
converts disabilities removal Bill
File No. - 8 of 1904-10

Dated Bangalore, 27th July 1909.

SIR,

I am directed to address the Durbar regarding the Civil disabilities of Native Christian converts in the Mysore State.

2. It appears that by a decision of the Chief Court of Mysore in Appeal Case No. 149 of 1893 (Dessapah vs. Chickammah)which was heard in December 1894, the Plaintiff and Appellant father was refused the custody of his minor children on the ground of his apostacy from the Hindu faith. In the words of the judgment delivered by Mr. Ramachendra Iyer, the view was adopted that "the "Hindu Law makes an apostate lose his Civil rights, justi- "fies the wife if she chooses to live separately from him, "and empowers his sons to divide his property among them. "It was to remove these disabilities that Act XXI of 1850 "was passed, and it being admitted that that Act has not "been extended to the Province we have no right to declare "that the disabilities do not exist."

3. Since the declaration of the law in the Mysore State as thus laid down, the question of introducing

into

into the State legislation on the lines of Act XXI of 1850 has been discussed, and meanwhile in the Civil and Military Station of Bangalore, which is under the jurisdiction of the British Government, the Act has been applied. As regards the territories governed by His Highness the Maharaja of Mysore, the Secretary of State (Lord George Hamilton) expressed, in 1902, the hope that His Highness, after his accession to administrati power, might find himself able to introduce changes in the direction of mitigating disabilities arising from a change of religion.

4. It is understood that another case was decided, on the 2nd September 1907, in the Tumkur Munsiff's Court in which a Hindu and one of his sons, who had changed their religion, were held not to be entitled to sue for a declaration of their proprietary rights, which rights were adjudged to belong to another son, undergoing penal servitude, by reason only of his continued profession of the Hindu faith. No appeal was preferred which, it is presumed, may be accounted for by the decision of the Chief Court referred to above. The question of legislation has thus been revived.

5. AAt the instance of His Majesty's Secretary State for India I am to request that this Residency may be furnished with the record of the Tumkur Case referred to and at the same time informed whether, during the long administration of the Mysore State by the Government of India, any cases of a similar character were brought before the Courts, and, if so, how they were decided. If during that period the principles of British justice which were expressed in the Act XXI of 1850 sufficed to prevent any such litigation for depriving a parent of his natural rights over his children, or a proprietor of the control of his own property in the case of any Hindu who might change his religion, then the reversion to such penalties after so long an interval constitutes a strong reason for legislation. For it cannot be denied that these disabilities are inconsistent with the

the established principles of modern justice, as well as with the law of British India. Both the Secretary of State and the Government of India, however, consider that the matter should be left at this stage to the discretion of His Highness the Maharaja. But if His Highness' Government decline to legislate, I am to ask to be favoured with a full statement of their reasons for submission to the Secretary of State. It would be necessary, in any case, to ensure that the fundamental rights and liberties of British subjects residing in the Mysore State are not exposed to forfeiture while living in Mysore on the mere ground that they held religious views professed by other citizens but not the views which their Hindu fathers held.

I have the honour to be

S I R

your most obedient servant

First Assistant Resident

91

Legis 28 of 1909-10
series

Letter No. 1 dated 11th
Feby 1910 from the Secretary to Govt.
Revenue & Legislative Depts.
to

The First Assistant
to the Honble the
Resident in Mysore.

Fol: No: 648/Exm 4
Dt 4-2-1910

Sir

I am to express
regret that your letter
No: 4936 dated July 1909
on the subject of certain
civil disabilities of Native
Christians in Mysore, has
not yet been formally
answered. But the subject
has been receiving the
Durbar's unremitting
attention as the Honble the
Resident is aware.

2 As desired in para 5
of your letter I am directed
to enclose a printed copy
(with 3 spare copies)
of

of the record in the
Junkur case referred to.

3. And regard to the
main question, I am
to invite a perusal of
para 56 of the Dewan's
address to the Darbar
Representative Assembly
on 27th October last (copy
enclosed) which will explain
the position in which the
question now stands. The
measure will be dealt
with in the Legislative
Council in the course
~~of the next few months~~
and I am to add that
the result will be duly
communicated to the
Residency.

4 Further consideration

6

of that branch of the case which would relate to the rights of British Indian subjects resident in Mysore with religious views different from those which their Hindu fathers held, will have to be undertaken on the result of the aforesaid reference to the legislative Council being reached, and the questions need not be discussed at this stage. I have &c.

Reed
1.2.10
Secretary.

Reed
dup.
31/1/10

73

Confidential

Pol-130-17/2.10

Legis 28-1909-10

To Secretary in Serial 3 to necessitate - Would perhaps be useful to compile a collection of cases under the N.D. act

Letter No. 889

From

Major W. G. GREY, I. A.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 12th February 1910.

Sir,

I am directed to acknowledge the receipt of ---- your letter Pol., No.648, dated the 4th February 1910, regarding the civil disabilities of Native Christian converts in the Mysore State, and to state that the further communication promised in para 3 thereof will be awaited.

2. In the meantime, I am to invite attention to para 5 of this office letter No.4936, dated the 27th July 1909, and to request that the Residency may be furnished as soon as possible with particulars of any cases similar to those of the Tumkur case, which occurred during the administration of the Mysore State by the British Government.

I have the honour to be,
Sir,
Your most obedient servant,

W. G. Grey
Major,
First Assistant Resident.

G.R.S. 26]

File No. 8

Serial No.

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 190

Date of issue

Signed by

No. To the Hon'ble the Resident.

To Draft D. o

Dear ( )

Sir,

In continuation of this office letter no Pol. no 648 dated the 24th inst on the subject of the Disabilities of Christian Converts in Mysore I write to say that, as intimated therein, the draft Rule Regulation published in the Gazette in 1903 (Copy Enclosed) will be placed at an early date before the Mysore Legislative Council.

I have &c

over.

SUBJECT.

95

C&B
14/2/10

Dewan

G.R.S. 26]

File No. Legs 28 of 24

Serial No. 94

Diary No. of letter replied to

General and Revenue Secretariat

(Legs)

, the 190

To

Letter No. 2523 dated 19th Feb. from the Secretary to Govt. Revenue Dept.

The Registrar of the District Court of Mysore, Bangalore

Date of issue 26-2-10

Signed by [illegible]

Sir,

I am directed to request the favour of you furnishing for as early a practicable with particulars of cases if any, either in the file of the Chief Court, or in the Court of the Judicial Commissioner in Mysore or in the file of any subordinate Courts similar to the case decided by the Honble of Dewan in O.S. Nos 108 of 1907 & 109 Sept 1907 & which was carried up to the Privy Council by the Secretary of State for India. An early reply is requested, as the matter is urgent.

I have the honour to be,
Sir,
Your most obedient servant,

Secretary

Typed
26-2-10

SUBJECT.

Printed Copy enclosed for ready reference.

The information is wanted only for the period during which the State was under British Administration.

9196

1 Legis

G.R.S. 26]

File No. 26-89.

Serial No. 5

Confidential

Diary No. of letter replied to

Letter No. J 2643 dated 5th March 1910 from the Secretary to Govt Finance & Revenue Dept

General and Revenue Secretariat
(Legis)
, the 190

To

The Dy Commr Mysore

Date of issue 8th March 1910.

~~Secretary~~

Signed by Mr S Srinivasaiya

C No 5

From a perusal of the papers regarding the enactment of a law for the removal of disabilities arising from Conversion in Mysore, it is seen that a representation of hardship based on real cases was made by the Reverend Le Dohic of the Roman Catholic Mission in Mysore and that ~~the Dy Commr of Mysore~~ his predecessor in office had written to the

over.

SUBJECT.

97

Government during 1901
or so a letter explaining
the circumstances of
the case therein referred to.
As this letter is not
forthcoming in this office
and as it is wanted here
urgently for reference
I am directed to request
you to be so good as
to forward to this office
at a very early date
a copy of the letter of
~~the 4th Comm. of Ingot~~
referred to above

I have &c.

for Secretary.

List of enclosures,

5/2/01

Copied by

Examined by

GPB—10,000—23-5-08

12

G.R.S. 26]

File No.

Serial No.

Diary No. of letter replied to

General and Revenue Secretariat

( )

, *the* 190

Date of issue 12/3/10

Signed by Mr. S. Hingamire

No. 203

I am desired by the Governor to request you to kindly take charge of the accompanying Bill relating to the removal of disabilities arising from change of religion or deprivation of caste and to introduce the same into the Legislative Council at a meeting of the Council to be held on Thursday the 31st instant of which due notice will be given by you in due course. I am to add that a copy of the speech which is intended to be read by you in moving for leave being granted to introduce the Bill

over.

After not meeting with approval the draft Bill prepared published in this Gazette of 13th Oct 03.

SUBJECT.

98

Cold
Nilakanta Rao
12/3

at the said meeting may be
forwarded ~~for the information~~
~~of the Board at their meeting~~ on or before the 23rd
~~thereof~~ inst.
the necessary papers are
forwarded herewith

Remain
Yours

[illegible]

[illegible]
Secretary

List of enclosures,

Copied by

Examined by

GPB—10,000—23-5-08

was made on the subject. On a careful search being made in the Records, an unsigned draft of a D.O. dated 21st November 1901 was found therein and I forward the same herewith for reference and kind return when no longer required. This was in reply to a D.O dated 20th November 1901 received from Dewan Rao Bahadur M. Shama Rao, Assistant Secretary on duty with the Dewan.

I have the honor to be
Sir
Your most obedient servant

S Rubakhanum
for Dep. Commissioner
Mysore District

No. 4616.
27/4

Legis 28 of 1909-10
Serial 7
6

Bangalore 25th/26th April 1910.

From

The Registrar of the
Chief Court of Mysore.

To

The Offg: Secretary to the Government
Genl: & Rev: Departments.

Sir,

With reference to your letter No. J. 2523/Legis: 28-09. dated the 26th February 1910, I am directed to state that no case similar to the one decided by the Munsiff of Tumkur in O.S. No. 1016 of 1906-07 has been filed either in this Court or in that of the Court of the Judicial Commissioner or in the file of any of the Subordinate Courts in the State during the period the State was under British administration.

I have the honor to be,
Sir,
Your most obedient Servant,
Registrar.

101

115

G.R.S. 26]

Legs File No. 26 of 1910
Serial No. 8

Diary No. of letter replied to 217

General and Revenue Secretariat

( )

, *the* 190

Date of issue 18-5-1910

Signed by C. Balasundaram

Letter Pol No. 972 & 18 5 1910

From The Hon'ble the Chief Secretary to Govt. Mysore

To The D. A. Bordent in Mysore

Bangalore

Sir,

With reference to para 2 of your letter No. 885 of the 12th February last on the subject of the removal of civil disabilities of native Christian converts in Mysore I am directed to state that no case similar to that decided by the Munsiff of Sandur in O.S. No 1016 of 1906 of his Court was filed either in the District Court or in the Court of the late Judl. Commissioner or in any of the Subordinate Courts of the State during

over.

SUBJECT.

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the period of
administration by the
British Commission.

I have the

List of enclosures Nil

Copied by [illegible] 7.5.10

Examined by [illegible] 12/5

GPB—10,000—20-4-06.

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Letter No. 3662 - Pol 1954
R 14-6-10

Copy to Dewan
14.6.10

J 3090.

FROM

THE HON'BLE MR. S. M. FRASER, C. I. E.,
RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 13th June 1910.

SIR,

Leg. 25/09

I have to acknowledge the receipt of Mr. Balasundaram Iyer's letter No.972-Poll. dated the 18th May 1910, regarding the civil disabilities of Native Christian Converts in the Mysore State.

2. At the instance of the Government of India, I am to enquire when the further communication may be expected as to the legislation on the subject which the Mysore ---- Durbar propose to introduce in the Mysore Legislative --- Council.

I have the honour to be,
Sir,
Your most obedient servant,

S M Fraser

Resident.

K.M.

R. P. B.—6-1910.—500.

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Letter No 10 dated the
8th July 1910 from the Secretary to Govt. of India
Revenue Dept. to

The P.A. Resident
in Mysore

8-7-1910.

Sir,

With reference to the Hon'ble the Resident's letter No 3662 dt the 13th June 1910 to the address of the Dewan enquiring when a further communication regarding the civil disabilities of Native Christian Converts in the Mysore State may be expected. I am directed to state that the Bill on the subject will be placed at an early date meeting of the Legislative Council which will be arranged for after the present marriage festivities are over

104 I have &c.

Sd/
Illegible

Letter No. Political 718, dated the 31st January 1911, from the Secretary to Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore.

"I am directed to refer to the correspondence ending with my letter Political No. 648, dated 4th February 1910, on the subject of the disabilities of Christian Converts in Mysore and to state as follows:—

2. In accordance with the intention expressed in para 3 of that letter, the Bill prepared in 1905 by Mr. Staley's Committee was brought before the Legislative Council at its meeting held on the 15th August 1910 with a motion for leave to introduce the Bill, and with the intimation that it was not a Government measure in the sense in which that term is ordinarily understood and that official members were at liberty to vote on the motion according to their independent judgment. As will be seen from the enclosed copy of the report of the proceedings, the Council, after a lengthy discussion, rejected the motion.

3. The attitude of His Highness' Government at present in regard to this matter, I am to explain, is one of strict neutrality. It may be that the proposed legislation, if given effect to, may not result in any harm, as none has resulted in British India from the passing of Act XXI of 1850. But His Highness' Government cannot shut their eyes to the fact that there is very strong and deep-rooted objection on the part of the public to the proposed legislation. This has become manifest ever since the publication of the draft Regulation in 1905, and it is a significant fact that the opposition to the measure is shared by the Mahomedan, equally with the Hindu, population of the State. As regards the strength and genuineness of this opposition, it is sufficient to state that petitions signed by about 34,000 individuals (Hindus and Mahomedans) have been received against the measure, while the number of signatories to petitions in favour of it was only 2,078, (of whom only one was a non-Christian), that the opinion of the Mysore Representative Assembly taken on two different occasions (*vide* extracts appended), namely, in 1906 and in 1909, was emphatically against the measure, and lastly that the Legislative Council refused even to grant leave for the introduction of the Bill

The grounds of this opposition on the part of the public may be briefly stated to be as follows. A change of religion on the part of a Hindu necessarily involves a definite loss of caste and a complete severance of all his former social ties and relationships. His wife will no longer consort with him, his parents and his children will no longer live with him. None of his relations or friends of the same caste will even dine with him or take water at his hands. If his children follow him into the new faith, they can never marry persons of their prior social circle. The convert thus becomes for all practical social purposes an utter alien to his family, friends and social circle; and this obtains not alone in the so-called superior twice-born castes but in every caste whether high or low. The close association above described between religion and social life prevents the Hindu from looking at the Bill from the purely abstract standpoint. In Hindu Law, the inheritance of property is intimately connected with the performance by the heir of the obsequies of the deceased owner. Whatever may be the criterion for determining the order of succession according to the Hindu Law as in force in Mysore—whether it is the principle of "Consanguinity" or the principle of "Religious efficacy"—it is admitted on all sides that inheritance and the performance of spiritual rites are very closely associated with each other. It is therefore impossible to alter the Hindu Law of succession without at the same time affecting the Hindu religious and social system on which that law is based. In the view of a Hindu, to grant the rights of inheritance and succession to a person who has given up the Hindu religion and his caste and has thereby rendered himself incapable of performing the ceremonial duties due to his deceased ancestors and cut himself off from the society in which he was born, would be to allow him the enjoyment of the privileges of a Hindu under the Hindu Law while releasing him from the obligations incidental to such privileges.

5. It is doubtless true that much of this opposition is due to nothing more than sentiment; but it is equally true that many of the arguments in support of the proposed legislation are also based only on sentiment. In Mysore, as elsewhere, a convert to Christianity enjoys as much protection to his personal property as any of his fellow-citizens professing a different religion. As a Christian he is not prevented from acquiring, holding, or disposing of property of any description, from pursuing any calling or holding any public office. It is only in certain matters of inheritance, succession, adoption, marriage and guardianship affecting a Hindu or a Musalman as such, which are allowed—as in British India—to be regulated by the laws peculiar to each community, that the convert is debarred from exercising certain rights which are peculiar to the status he has abandoned by his conversion and which affect others who remain Hindus or Musalmans as the case may be. Even under the existing Hindu Law, the position of the convert in respect of these matters is not in reality so bad as is sometimes represented. So far as ancestral or joint property is concerned, the convert can effectually secure his share therein by exercising, prior to his conversion, his undeniable right to enforce a partition of the family property. His own self-acquisitions he can always take with him. It is only the right of inheritance strictly so called, that is, the right of succeeding to property left by a decedent owner, that the Hindu Law does not concede to the convert.

6. Owing obviously to the extremely small number of cases in which the existing state of the law is felt as a hardship, the agitation in favour of legislation was dying out, but has again been revived by the judgment of the Munsiff's Court of Tumkur in the case referred to in para 4 of your office letter No. 4,936 dated the 27th July 1909. This judgment brought out in a striking manner the contrast that exists between the position of a convert and that of a felon; but if the case had been taken in appeal, it is not impossible that the appellate Court would have held that a murderer (and that too one who murdered a member of the family) was a 'patita' (one who has fallen) and therefore liable to exclusion from inheritance. Unfortunately, there was no appeal and there was one very peculiar feature about the case which might well have alienated the sympathies of friends interested in the subject. The fact was that the first and third plaintiffs, who are now held up as victims to an unjust law, brought the suit in the guise of Hindus. They denied on oath that they were Christians, and Missionary witnesses had actually to be called on the other side to prove that they were baptised Christians. A great deal has been made of the fact that the only successful plaintiff was a Hindu felon and it is only fair to dwell on this other aspect, which deprives the two Christian plaintiffs of all moral claim to sympathy. It is not too much to say that they got only what they deserved and that the less said about the case as one of individual hardship, the better!

7. With reference to the surmise expressed in para 5 of your office letter of the 27th July 1909 referred to above, that during the period of the administration of the State by the Government of India, the principles of British justice which were expressed in Act XXI of 1850 may have "sufficed to prevent litigation for depriving a parent of his natural rights over his children or a proprietor of the control of his own property in the case of any Hindu who might change his religion," I am to observe that the decision in the case of Hutchi, which was in the year 1873, shows that the law on this subject in operation in Mysore during the days of the British Commission was identical with what it is at the present day.

8. In these circumstances, I am to state that the Durbar consider that they would not be justified in proceeding with the matter further at present.

9. Turning now to the question of the applicability of the provisions of Hindu Law now under discussion to British subjects resident in the State, I am to state that so far no instance has occurred of a convert with a British Indian domicile having come by virtue of his residence in Mysore or otherwise under the operation of the Mysore Law—a circumstance which may be taken as indicating that such instances are not likely to be of frequent occurrence in the future. Any legislation undertaken with the object of providing a law for such cases would, in the opinion of the Durbar, be justly open to the objection that there is no practical necessity for it.

10. It would indeed be difficult to determine in what manner exactly any cases of conflict would present themselves in future. If they occur, the Durbar are advised that the result would not be very different from what it would be in British India, as the principles of Private International Law would govern such cases. It is perhaps only in relation to immovable property that the local law might possibly be applied so as to bring about a different result from that in British territory; but even this is doubtful and it is possible that the Courts may find a way of avoiding the conflict. The Durbar feel that for such an exceptional and almost imaginary case, no special legislation is at present needed."

Enclosure 2

Subject No. 9 of the subjects discussed before the Mysore Representative Assembly of 1909.

Legislation.

Converts' Disabilities Removal Regulation.

Summary of discussion .-

" The idea embodied in the Regulation is repugnant to all the notions on which the devolution of property according to Hindu Law is based. A son who did not worship his father's gods could not claim his property as the Hindus believe that it should descend only to those heirs who would keep up the family custom. The position of the convert was very illogical as he wanted only the benefits of his inheritance without the corresponding obligations. Further, the cases of conversion are very rare and do not justify legislation against the unanimous opinion of the public. The proposed legislation is inconsistent with the policy of religious neutrality laid down in the Queen's Proclamation of 1858, and reiterated in His Majesty's Message in 1908.

One member expressed a fear that the Regulation might be passed in spite of public opinion if the official majority voted for it, and the Dewan remarked that it was not the intention of Government to treat the measure as an official bill which the official members were bound to support. The official members would be allowed the liberty to vote according to their own individual opinions.

In response to a call from the Dewan for the views of the Mahomedan members of the Assembly, Mr. Dervish Peer said that the Koran disinherited all converts and that even a convert to Islam lost all his pre-Islamic rights. The Mahomedans were against the proposed measure and joined the rest of the Assembly in protesting against it.

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Mr. Pilkington who was invited to express his opinion stated that he recognised that there was a strong body of

public

public opinion against the measure; but Hinduism ,more than other faiths, was always tolerant of other beliefs . The present law interfered with liberty of ~~conscience~~ conscience and was unworthy of best traditions of Hinduism. He thought that a child's birth-right should not be taken away simply on account of a change of religion, but the father had a full right to will away his personal property from the son, if so disposed.

One of the members stated that there was not a single person in the Assembly who would support the measure; and the whole assembly stood up as agreeing with the statement."

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Subject No. 1 of the subjects discussed before the Mysore Representative Assembly of 1906.

Legislation.

Converts' Disabilities Removal Regulation.

x x x

Reply of Government. The main point is that the general sentiment of the Assembly is distinctly against the passing of the proposed measure; and this will be duly noted.

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